MONTANA LEGISLATIVE HISTORY

Chapter 392 19 83

Bill H 678 S _____ Original bill & history ✓ C

H. Committee on Fish & Games

Hearing Date(s) h 2/15 ____ C

✓ 2/15 ____ C

_____ ____ C

_____ ____ C

Date Out _____ ____ C

S. Committee on Judiciary

Hearing Date(s) h 3/18 ____ C

✓ 3/19 ____ C

_____ ____ C

_____ ____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

REPORT: 02/12/83, DO NOT PASS
BILL KILLED: 02/14/83

HB 677 -- NILSON, R. MANNING, PHILLIPS, ET AL. -- TO ALLOW BINGO PRIZES TO BE PAID IN CASH; AMENDING ....

INTRODUCED: 02/08/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/08/83
HEARING: 2/16/83
REPORT: 02/16/83, DO PASS, AS AMENDED
2ND READING: 02/18/83, DO PASS AYES: 53; NAYS: 18
3RD READING: 02/21/83, DO PASS AYES: 71; NAYS: 29

TRANSMITTED TO SENATE: 2/21/83
REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83
HEARING: 3/21/83
REPORT: 03/25/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/26/83, BE CONCURRED IN, AS AMENDED AYES: 27; NAYS: 20
3RD READING: 03/28/83 AYES: 27; NAYS: 22

RETURNED TO HOUSE WITH AMENDMENTS: 3/28/83
2ND READING: 04/01/83, BE NOT CONCURRED IN AYES: 73; NAYS: 10

CONFERENCE COMMITTEE APPOINTED: 04/01/83
ON MOTION, 4/20/83, THAT THE CONFERENCE COMMITTEE BE DISSOLVED AND THAT THE BILL BE RETURNED TO THE SENATE FOR FURTHER CONSIDERATION. MOTION FAILED BY THE FOLLOWING VOTE: AYES: 23; NAYS: 27.
ON MOTION, 4/20/83, THAT THE CONFERENCE COMMITTEE BE DISSOLVED AND THAT A NEW CONFERENCE COMMITTEE BE APPOINTED. MOTION FAILED BY THE FOLLOWING VOTE: AYES: 21; NAYS: 27.
DIED IN CONFERENCE COMMITTEE

HB 678 -- KITSELMAN, KEYSER, SAUNDERS, ET AL. -- TO PROVIDE AN ADDITIONAL SENTENCE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION; AMENDING ....

INTRODUCED: 02/08/83
REFERRED TO COMMITTEE ON FISH & GAME: 02/08/83
HEARING: 2/15/83
REPORT: 02/15/83, DO PASS, AS AMENDED
2ND READING: 02/18/83, DO PASS AYES: 65; NAYS: 2
3RD READING: 02/21/83, DO PASS AYES: 98; NAYS: 2

TRANSMITTED TO SENATE: 2/21/83
REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83
HEARING: 3/18/83
REPORT: 03/19/83, BE CONCURRED IN
2ND READING: 03/22/83 AYES: 49; NAYS: 0
3RD READING: 03/24/83 AYES: 49; NAYS: 0
RETURNED TO HOUSE 3/24/83

TRANSMITTED TO GOVERNOR: 04/01/83
SIGNED: 04/05/83, CHAPTER 392

HB 679 -- JONES -- TO CLARIFY THE DETERMINATION OF THE RATE OF TUITION FOR ELEMENTARY SCHOOL PUPILS; AMENDING ....
BY REQUEST OF: THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

House BILL NO. 678

INTRODUCED BY Kitselman Hagen Saunders
Lee Wellen Ryan Underdal Curtiss Zabrocki-Pistoria
Fyfield Bylan Hagen Sawyer E. Smith

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN ADDITIONAL SENTENCE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION; AMENDING SECTION 46-18-222, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, [section 1], 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be

 INTRODUCED BILL
HB 678

1 sentenced, was significantly impaired, although not so
2 impaired as to constitute a defense to the prosecution;
3 (3) the defendant, at the time of the commission of
4 the offense for which he is to be sentenced, was acting
5 under unusual and substantial duress, although not such
6 duress as would constitute a defense to the prosecution;
7 (4) the defendant was an accomplice, the conduct
8 constituting the offense was principally the conduct of
9 another, and the defendant's participation was relatively
10 minor; or
11 (5) where applicable, no serious bodily injury was
12 inflicted on the victim unless a weapon was used in the
13 commission of the offense."
14 NEW SECTION. Section 3. Codification instruction.
15 Section 1 is intended to be codified as an integral part of
16 Title 46, chapter 18, part 2, and the provisions of Title 46
17 apply to section 1.

-End-

STATUS SHEET

FISH AND GAME COMMITTEE PAGE 4

48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
541	AN ACT TO GENERALLY REVISE THE LAWS CONCERNING THE ISSUANCE AND TERMINATION OF FISH AND GAME LICENSES;	1-28	PHILLIPS	2-8	DO PASS	2-10
564	AN ACT AUTHORIZING DEALING IN BABY ANIMALS; ELIMINATING THE PENALTY FOR DEALING IN BABY ANIMALS.	1-29	VINGER	2-8	DO NOT PASS	2-8
567	AN ACT TO PROHIBIT DESTRUCTION, DISTURBANCE, OR REMOVAL OF TRAPS OR REMOVAL OF WILDLIFE FROM TRAPS BELONGING TO ANOTHER.	1-29	BERTLESEN	2-8	DO PASS	2-8
661	AN ACT TO ESTABLISH A NONGAME WILDLIFE ADVISORY COUNCIL AND PROVIDE RESPONSIBILITIES FOR THE COUNCIL.	2-6	REAM	2-10	DO NOT PASS	2-10
672	AN ACT TO WAIVE CAMPING FEES FOR OTALLY DISABLED PERSONS.	2-7	KITSELMAN	2-15	DO NOT PASS	2-15
678	AN ACT TO PROVIDE AN ADDITIONAL SENTENSE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION.	2-8	KITSELMAN	2-15	DPAA	2-15

Form CS-32
1-81

HOUSE FISH AND GAME COMMITTEE

February 15, 1983

The meeting was called to order by Chairman Les Nilson in room 420 of the Capitol Building at 7:00 p.m., with all members present.

Chairman Nilson opened the meeting to a hearing on House Bills: 672 and 678.

HOUSE BILL 672

REPRESENTATIVE LES KITSELMAN, District 60, Billings, said this is an act to waive camping fees for the totally disabled persons. This bill came from a lady here in Helena, who is handicapped and who likes to camp. If a person meets the requirements for being totally handicapped, that person would be exempt from the fees.

There were no proponents to House Bill 672.

OPPONENTS

RON MARCOUX, Department of Fish, Wildlife, and Parks, said the department opposes this bill. Mr. Marcoux presented the testimony of Jim Flynn, director. (see exhibit 1)

There were no questions from committee.

Rep. Kitselman closed by saying I am really pleased to see that the Fish, Wildlife, and Parks Department is concerned about the fees. The purpose of their opposition is the eroding away of any fee base. I would like the committee to be aware that this does affect a rather small number of people. I would recommend a DO PASS on this bill.

Rep. Devlin asked Mr. Marcoux if he has any projection of the amount of lost revenue. The response was it would be difficult for us to project. There is $124,000. in the whole program. Seasonal permits are $20 for the full season. Golden years permits are issued to senior citizens for $1, the remainder are $2 to $3 per night, depending on where you are. With the decals on vehicles for the seasonal passes, more than one person may be in a vehicle. This presents some complications as to administration of the decals.

Rep. Spaeth asked Mr. Marcoux to comment on the possibility of expanding the program to include the handicapped in the $1 fee. The answer was the problem is that those people would more than likely obtain the decals through application to Helena. It potentially can be accommodated, but we are potentially dealing with some reduction of revenue.

Chairman Nilson closed the hearing at 12:45 p.m.

HOUSE BILL 678

REPRESENTATIVE LES KITSELMAN, District 60, Billings, opened by saying this bill is a considerably more serious bill. It is an act to provide an additional sentense for an offense committed while carrying a handgun loaded with armor-piercing ammunition. This bill originated from a highway patrolman from Billings, who was shot a nubmer of years ago. He now wears a protective vest. The bullet was designed to be used for indoor target range shooting. The intention of this bill is not to preclude the sale or use of this bullet, but to simply restrict use in the perpetration of a crime. The main reason this bill is here is for the safety of the law enforcement officers. It gives the law enforcement officer another tool to put the criminal behind bars, where he should be. This bill provides an additional sentense, describes what armor-piercing is, describes what a handgun is as a means of firearm, describes what armor-piercing ammunition is, and uses the ballistic standards from the National Rifle Association. It talks about a mental capacity exemption, and the exemption for a person under 18 years of age.

PROPONENTS

BILL ASHER, Bozeman, said I am speaking as an individual today. I am not speaking in an official capacity for the National Rifle Association, although this is an NRA backed bill. I would urge the press not to stir up the countryside by saying this is a gun control bill, because it is not. The heart of the matter is the additional sentense for the misuse of this ammunition.

JAMES McCONELL, Montana Rifle and Pistol Association, said we support the bill. We basically believe that this bill puts the burden of law on the perpetrator of the crime. The bill was initially developed as a teflon bullet bill. Mr. McConell said he would like to quote from the Associate Attorney General of the United States. He was testifying against a bill which would have banned ammunition. His suggestion was to introduce a bill very similar to the one introduced before this committee today, which would require a mandatory sentense for the misuse of this type of ammunition. The type 2 body armor is composed of several layers of ballistic cover, which is a synthetic fiber. The definition is the best one available, and we feel that the bill does put the burden on the people who would misuse the firearm in the commission of an offense. I would also like the committee to consider the definition on line 13, page 1, defining an offense on a police officer or the commission of a felony. (see exhibit 3)

JERRY WILKERSON, Montana Highway Patrol, told the committee he is a firearms instructor. Mr. Wilkerson then passed around an example of a type 2 body armor. The armor piercing or teflon coated bullet is a cop killer. This is one of it's main purposes. The only people who wear armor-piercing body armor are police. There 528,000 law enforcement officers around the nation. Of that number, 250,000 wear body armor. The Montana Highway Patrol does issue to each member, this equipment, and we urge each person to wear it. This bullet would penetrate seven thicknesses of this material. The armor-piercing bullet is not issued by our department for use. Years ago, we would get armor-piercing bullets. They were done away with because there is no use deisgnated for these bullets in police work.

BILL WEAR, Helena, said I would like to go on record in support of this concept. My department does not issue this bullet. It is dangerous and unpractical for law enforcement.

OPPONENT

CHARLES A. RODGERS, Helena, submitted a written copy of his testimony. (see exhibit 2)

STEPHEN C. JOPPA, Helena, said the main problem with the bill is that the latter part already exists on the books. It is presently being used by criminals to escape sentense. The judges are not enforcing this part of the law. Criminals are escaping primarily through No. 2 and No. 3 of that section, the duress and mental capacity clauses. I would suggest that the committee amend those sections out.

Rep. Kitselman closed by stating the reason those exceptions are there is they are current law. It is up to a jury trial and to the judge to prove these defenses.

Questions from committee. Rep. Mueller asked Rep. Kitselman if section 2 and so on are already in the codes, would it be necessary to have them in this bill. The response was yes, it would be necessary to have this in the bill because it speaks in this portion of the title in section 46-18-222, where this is referred to in another section of law.

Rep. Spaeth asked Rep. Kitselman if there is a minimum mandatory sentense of five years, should there also be a maximum sentense. The reply was that depends on the seriousness of the crime, as it does involve human life. There is one purpose, and that is to kill another human being. If it is used in that capacity, the seriousness of the crime merits at least a five year sentense.

Rep. Spaeth said there is no maximum. Do you want one, and if so, is there a reason for one? Rep. Kitselman replied I would like the strongest possible sentense that would allow the least possible avenue for parol.

Rep. Hart asked Mr. McConell if the bullets are readily available wherever you can buy ammunition. The reply was the definition of armor-piercing ammunition does not contain exclusively KTW ammunition. Commonly available handgun ammunition such as all 44 magnum and high velocity ammunition meet this definition of armor-piercing. KTW bullets are not commonly available.

Rep. Hart asked Mr. Wear if an ordinary person could go into a store and purchase these types of bullets. The answer was I am not aware of it, but I would say it could be accomplished. If someone really wanted them, they could get them.

Rep. Daily asked Mr. Ware why someone would want to use these bullets other than to kill a person. The reply was I don't know that there would be any other reason. We don't issue them, we don't allow them, so I don't know why they are even practical.

Rep. Daily asked Rep. Kitselman why did you back off your original proposal. The response was the reason I backed off is that they are used for indoor target ranges. It keeps the lead from filling the air, and that was their original purpose. They are impractical for the average target shooter from the standpoint that they are expensive and are not readily available. But rather than completely ban them, we feel this is a backdoor way to control. The burden is put on the back of the person committing the crime.

Rep. Daily asked Rep. Kitselman if he felt this was a means of gun control. The response was in talking with the NRA members and the law enforcement people, yes it could be construed as that. If this year we would ban the use of a teflon coated bullet, what then precludes us next year from coming in and banning another form of bullet.

Rep. Swift asked Rep. Kitselman if he would have any aversion to inserting some language making this under aggravated commission of a crime, which would strengthen the possibility of a sentense. The answer was the main reason for this bill is the safety of the law enforcement officers. If you want to make the punishment more strict, I would not be averse, but I also want it to be a statute that would stand in a court system as constitutional.

Rep. Hart asked Mr. McConell if they can be found in the state. The response was I would suspect they are available in the State of Montana to police departments if they want them.

Mr. Rogers commented in answer to Rep. Hart's question, unfortunately these bullets don't have to be purchased in a store. They can be made in a home workshop.

The hearing was closed at 1:15 p.m.

EXECUTIVE SESSION

HOUSE BILL 678

Rep. Daily moved House Bill 678, DO PASS.

Rep. Spaeth proposed and moved an amendment to House Bill 678 to insert on line 18 more than 25 years. The motion carried unanimously.

Rep. Daily moved House Bill 678 DO PASS as amended, the motion carried 16 to 1, with Rep. Jensen voting no.

HOUSE BILL 672

Rep. Daily moved House Bill 672, DO PASS.

Rep. Mueller said he would oppose the bill because it would build in administration problems. This isn't a way to help those people. I don't think it is a practical piece of legislation.

Rep. Manuel said a whole bunch of people would be getting in free just because one person is handicapped. I can't see the use in it.

Rep. Spaeth made a substitute motion, House Bill 672, DO NOT PASS, the motion carried with Representatives Daily, Swift, Jensen, Saunders and Devlin voting no.

Chairman Nilson adjourned the meeting at 1:20 p.m.

Les Nilson

LES NILSON, Chairman

Cheryl Fredrickson

Cheryl Fredrickson, secretary

VISITOR'S REGISTER

HOUSE Fish and Game COMMITTEE

BILL 678 DATE 2/15

SPONSOR Kitselman

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
C.A. Robers	1517 Florence Helena Mont 59601	MYSELF		✓
[illegible]	[illegible] MT	[illegible]	—	
BILL ASHER	BOZEMAN	SELF	✓	
[illegible]	Helena	[illegible] Chief of Police Assn	✓	
Jerry D. Williams	Helena	Mt Highway Patrol	✓	
STEPHEN C. JOPPA	HELENA	SELF	✓	AMEND

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit 2

WITNESS STATEMENT

Name Charles A Rodgers

Address 1517 Flowered Helena

Representing Sc/F

Bill No. HB 678

Committee On

Date

Support

Oppose ✓

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Exception: Make Bill meaningless

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Exhibit 2

Helena, Mont.
Feb. 15, 1983

Hon. Chairman and Committee Members:

Regards HB 678, an Act to provide an additional sentence for an offense committed while carrying a hand gun loaded with armor piercing ammunition.

In reading the first part of the Bill it would appear to provide a mandatory sentence for the use of a hand gun loaded with armor piercing ammunition in the commission of a felony. However, when we read the exceptions it would appear that the defendant has so many ways to escape the additional penalty that such a law becomes useless.

We already have sufficient "laws" on the books as it now stands without further additions such as HB 678.

Yours Truly

Charles A. Rodgers

Charles A. Rodgers
1517 Floweree
Helena, Mont. 59601

Montana Rifle & Pistol Association

affiliated with
National Rifle Association

Exhibit 3

2/21/83

Re: House Bill 678

Cheryl:

Enclosed is a copy of the statement of Rudolph Giuliani I quoted during the Fish & Game hearing. Those segments I quoted are highlighted in yellow. If you need additional information, please feel free to contact me.

Sincerely
Jim McConnell
Legislative Chairman

Department of Justice

Changed emphasis.

Exhibit 3

HB 678

STATEMENT

OF

RUDOLPH GIULIANI
ASSOCIATE ATTORNEY GENERAL

BEFORE

THE

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

ARMOR-PIERCING BULLETS

ON

MAY 12, 1982

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HB 678

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear today to describe the threat posed to law enforcement and other officials -- including the President -- by the availability of handgun ammunition capable of penetrating soft body armor. As this Subcommittee is probably aware, the Department of Justice developed the body armor used today by an estimated 50% of the nation's law enforcement officials and it is largely through the efforts of the Department and the International Association of Chiefs of Police that soft body armor is so widely used. This Subcommittee has previously received testimony to the effect that the use of soft body armor has saved the lives of an estimated 400 police officers during the past seven years. We are, therefore, deeply concerned over the availability of ammunition capable of defeating soft body armor and have devoted substantial efforts in recent months to developing an appropriate and workable legislative remedy to the problem.

Before proceeding to our specific legislative recommendation, let me take a few moments to put the issue in perspective. Toward this end, I would like to discuss briefly the development of modern body armor and our reaction to the recent threat to persons who rely upon body armor for protection.

Personal body armor available during the earlier part of the century was inappropriate for normal police work. Early garments were so heavy and awkward that police officers avoided wearing them. In addition to their bulk and weight, such garments inhibited movements necessary for self-defense. Heat buildup was another problem adding to wearer discomfort.

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In 1971, a Justice Department employee working with the Department's technology development program became aware of a new synthetic fiber, marketed under the trademark name "Kevlar." This new fiber was originally developed for use as a replacement for steel cords in automobile tires. Recognizing the potential of this fiber, the Department of Justice pioneered the development of a prototype vest made from Kevlar and, following extensive laboratory work, tested this vest in fifteen cities. Results exceeded expectations. In addition to offering exceptional ballistics resistance, the new vests were light, flexible and could be worn unobtrusively under normal street clothes and uniforms.

By 1975, dozens of manufacturers had entered the body armor market producing a wide range of soft, lightweight body armor. Because few state or local agencies had the resources to test such body armor, the Department of Justice, as part of its Law Enforcement Technology Assessment Program, developed a body armor standard published in December of 1978. This standard establishes procedures for testing body armor and creates five different armor categories: Type I, Type IIA, Type II, Type III and Type IV. These body armor categories protect against increasing threat levels. For example, the Type I armor is the lightest weight providing protection against designated handgun ammunition when fired from a distance of five meters under specified conditions; the Type IV armor is the heaviest providing protection against designated armor-piercing rifle ammunition. Types I, IIA and II armor are varieties of soft body armor; Types III and IV incorporate metallic or ceramic materials and are

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HB 678

normally used by special weapons teams in sniper or seige situations. We have brought with us today examples of different types of armor and will discuss these varieties of armor in detail at the conclusion of my statement if the Subcommittee so desires.

Extensive testing was performed by the Department of Justice during the course of developing this armor standard. Moreover, other entities, particularly the Department of the Army, have carried out numerous tests to determine the penetration potential of various classes of firearms and ammunition as well as the capabilities of various categories of bullet-resistant body armor. The Department of Justice has also tested a wide range of handgun ammunition in connection with efforts to assist law enforcement agencies in selecting the most effective possible ammunition for police use.

In short, our technicians have known from the beginning that soft body armor, like all other forms of armor, can be pierced by particular types of rounds. As noted above, the standards used for testing different classes of body armor require that the armor be able to withstand specific types of bullets posing particular threat levels in order to receive a rating. It is for this reason that body armor is referred to by technicians as "bullet-resistant" or "ballistics-resistant" apparel. The fact that body armor is more commonly referred to by the public as "bullet-proof" has created the mistaken impression that body armor can or should be able to stop any bullet. Rather, soft body armor is designed to stop the most common threats that police officers face.

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HB 678

With this background, experts were not at all surprised by a network News program earlier this year on the KTW bullet and its ability to penetrate multiple thicknesses of soft body armor. Our technicians were, however, deeply disturbed that such information was so widely distributed to the public, in essence creating a shopping list for professional criminals.

The concern of the experts over the publicity surrounding the KTW bullet is two-fold. First, we fear that publicity surrounding the availability of ammunition capable of defecting body armor will encourage assassins and other criminals to search out these particularly dangerous classes of ammunition to use in their endeavors. Although our technicians have known about the KTW bullet for many years, this and other forms of armor-piercing ammunition were not felt to constitute a substantial threat because most criminals are not so sophisticated as to realize that the protection afforded by body armor is limited and that there are varieties of ammunition commonly available which will penetrate body armor. In the past, the conclusion that armor-piercing rounds posed only a minimum threat was difficult to fault as we are unaware of any instance in which an armor-clad police officer has been shot with armor-piercing handgun ammunition. Now, however, the publicity surrounding the KTW bullet has, in our view, increased the likelihood of such attacks.

Our second concern over the publicity is that it will, we believe, encourage a fatalistic attitude among police officers resulting in reduced use of body armor. In this regard, although the new soft body armor is comfortable to wear by comparison with

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earlier types of armor, it is a constant problem for police administrators to insure that body armor issued to officers is indeed worn. Too often, officers to whom body armor was issued have been killed or severely wounded because the armor was left in a dressing room locker or the trunk of a squad car. Continuing publicity about the availability of armor-piercing handgun ammunition, together with the complete absence of any effective statutory safeguards, will, we fear, cause some police officers to decide that it is useless to wear their armor when ammunition is available on the streets that will defeat the armor. This potential indirect effect of armor-piercing handgun ammunition could result in more deaths and crippling injuries than the actual use of armor-piercing bullets against officers wearing body armor. In short, we believe it is important to let the law enforcement officers of the nation know that measures are being taken to prevent the criminal use of armor-piercing ammunition. Legislation in this area would, we believe, have the effect of encouraging law enforcement officers to wear body armor issued to them.

Again, because we feel that publicity surrounding armor-piercing ammunition has the effect of increasing the risk to those who use body armor, I will carefully avoid any discussion of specific handgun rounds capable of pentrating armor. I appreciate the cooperation of the Subcommittee in agreeing not to disclose the identity of particular armor-piercing ammunition. Suffice it to say that there are a number of handgun bullets capable of penetrating body armor in addition to the KTW which has received so much publicity

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and we believe it is contrary to the public interest to publicize such dangerous ammunition.

Penetration capacity is, of course, a matter of basic physics. There are two major factors which determine penetration capability. First is the surface area over which the force is distributed; a bullet which expands upon impact spreads its force over a larger area than one which retains its shape. Therefore, a projectile composed of a hard substance normally has greater penetration potential than a soft projectile which mushrooms upon impact. The second major factor in penetration is velocity; the higher the velocity of a bullet, the greater its penetration capability. Thus high-power rifles, because of the incredible velocities they produce, have greater penetration power than handguns. Soft body armor is designed primarily to protect against handgun bullets. This reflects the fact that handguns are the weapons of choice of criminals representing -- according to one survey -- 83% of firearms seized by police. Moreover, handguns represent a greater threat to law enforcement officials than long guns because they are easily concealable. We have, therefore, focused our attention on armor-piercing handgun ammunition.

One of the first actions taken by the Department of Justice in response to the publicity surrounding the KTW bullet was to arrange for a demonstration to verify that the information furnished by our technicians was indeed correct. In February, a variety of handgun bullets were tested against a Type II vest at the FBI firing range in Quantico, Virginia. That demonstration corroborated the

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information furnished by technicians -- a number of the bullets tested, in addition to the KTW, defeated the body armor. The armor used in that demonstration has been submitted to the Subcommittee for inspection and we will, of course, be pleased to furnish additional information regarding the February demonstration so long as we can do so without publicly disclosing the varieties of bullets which defeated the armor.

Based upon this and other information, we commenced development of a legislative response to the problem of armor-piercing bullets. Because an early discussion draft of a proposed armor-piercing bullet bill was somehow disclosed to the media and published in a firearms publication, it is no secret that our initial proposals in this area were very similar to H.R. 5437 introduced by Representative Biaggi. As the Treasury Department indicated in its testimony before this Subcommittee earlier this year, however, our continuing study of this issue revealed that there are serious flaws in the broad ban on armor-piercing handgun ammunition proposed in early Department legislative proposals and in H.R. 5437.

First, to date we have been unable to describe armor-piercing handgun ammunition in a way which reaches all rounds capable of defeating soft body armor without including a number of popular handgun bullets which have long been widely used for legitimate sporting and recreational purposes. The simple fact is that some bullets with a legitimate use will defeat soft body armor. Moreover, in certain handgun calibers, the effect of a ban on armor-piercing bullets would effectively deprive firearms owners of the use of

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their weapons by rendering illegal all presently available commercially manufactured ammunition.

Given the fact that we are aware of no instance in which an armor-clad law enforcement official has been attacked with armor-piercing handgun ammunition, we cannot justify legislation banning all ammunition capable of penetrating the type of soft body armor worn by law enforcement officials. Put simply, we cannot recommend legislation so seriously disrupting the firearms and ammunition industry and so clearly impinging upon the interests of legitimate gun owners where the basis is solely a potential rather than a demonstrated threat. Furthermore, I should note that the Department of the Treasury has negotiated agreements with several ammunition manufacturers which will reduce the potential that handgun bullets designed for penetration will be available to anyone other than law enforcement and military agencies. Treasury reports that ammunition manufacturers are sensitive to the problem and have responded in a responsible manner to our requests for limitations on armor-piercing bullets.

A second serious problem with H.R. 5437 is that it would produce unjust results. This difficulty arises from the fact that ammunition performs differently depending upon the type of firearm from which it is fired. A particular round fired from a revolver with a four-inch barrel, for example, might not penetrate body armor whereas the same ammunition, if fired from a revolver with a six-inch barrel might defeat the same armor. This is because increased barrel length affects projectile velocity thus enhancing penetration power. We believe, therefore, that it would be impossible to justify,

Ex. 3
HB 678

for example, imposition of a minimum mandatory prison sentence under H.R. 5437 when it could be demonstrated that the ammunition, although classified as "armor-piercing" under the definition in the bill, would in fact not penetrate soft body armor when fired from the handgun possessed by the defendant at the time of the underlying criminal offense.

In addition to these difficulties, there are others which have been discussed by the Department of Treasury which I will not dwell on today including the cost of testing all commercially available ammunition, the problem posed by ammunition which can be fired interchangeably from either handguns or long guns and so forth. Suffice it to say that we do not believe the ban proposals presently before the Subcommittee are appropriate.

Nevertheless, we see no legitimate reason for private use or possession of handgun bullets, such as the KTW, that are designed specifically for the purpose of armor penetration. Therefore, we will continue to work with the Department of the Treasury and with the Subcommittee to develop a workable definition of such bullets. Our clear objective is to prevent criminals from having access to handgun bullets designed specifically to penetrate armor. In the meantime, however, we believe that immediate action in this area is needed and have submitted to the Subcommittee a draft bill designed to fill the existing gap in federal law. We believe this stopgap proposal would provide a meaningful disincentive to use of armor-piercing bullets during the course of federal crimes. Our proposal would establish a minimum, mandatory prison sentence of five years for the use of armor-piercing handgun ammunition during

Ex. 3
HB 678

the course of a federal crime of violence. By contrast with other similar proposals, our bill would provide for imposition of this minimum mandatory sentence only where it can be proved that the ammunition would penetrate Type IIA body armor -- the most popular armor for law enforcement use -- when fired from the firearm in the possession of the defendant. This approach avoids the anomaly described above where a person could be subjected to enhanced sentencing even though a bullet classified as "armor-piercing" would not, in fact, penetrate body armor if fired from his weapon.

Our proposal covers only federal crimes committed with armor-piercing handgun ammunition as we believe that the state interest in prosecuting perpetrators of state offenses outweighs the federal interest. If our bill is enacted by the Congress, we will notify the 50 states and urge enactment of similar state laws to protect state and local law enforcement officials.

We believe that this legislation would provide a significant deterrent to the use of armor-piercing handgun ammunition and that, where such ammunition is used during the course of a federal crime, would insure that the offender is imprisoned for a lengthy period thereby incapacitating that individual from the further commission of such offenses. In this regard, our proposal makes clear that the minimum mandatory sentence is to be served consecutively with the sentence imposed for the underlying crime of violence, that the sentence is not subject to probation or suspension, and that a person so sentenced is not eligible for parole.

Finally, we recommend against the enactment of the various proposals before the Subcommittee to authorize detailed testing of

Ex. 3
HB 678

handgun ammunition and body armor. Although we do not have solid test data on every one of the hundreds of different types of handgun ammunition manufactured here and abroad in recent years, we do have extensive information on bullet characteristics and armor capabilities and do not feel that further elaborate testing such as that proposed in H.R. 2280 is necessary. Rather, we believe we have sufficient information upon which to base legislation along the lines of our proposal.

Mr. Chairman, we believe that handgun ammunition designed to penetrate armor must be kept out of the hands of criminals and we look forward to working with your Subcommittee toward that end. We also believe that the legislation we have proposed today -- although modest by comparison with some other bills -- would fill a gap in existing law by recognizing that certain types of handgun ammunition are particularly dangerous and that the commission of a crime involving such ammunition should result in harsher penalties than would otherwise be applicable. In essence, our proposal recognizes varying ammunition threat levels in determining sentencing just as do existing laws which provide for enhanced sentencing for use of a firearm during the course of a felony. This legislation would provide new and needed protection for law enforcement officials and others who use soft body armor. We will appreciate your attention to this proposal. Of course, we will be pleased to work closely with you and your staff in refining this proposal should you feel that further adjustments are needed.

STANDING COMMITTEE REPORT

February 15, 19 83

MR. SPEAKER:

We, your committee on FISH AND GAME

having had under consideration HOUSE Bill No. 678

first white reading copy (color)

"AN ACT TO PROVIDE AN ADDITIONAL SENTENSE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION; AMENDING SECTION 46-18-222, MCA."

Respectfully report as follows: That HOUSE Bill No. 678 be amended as follows:

1. Page 1, line 18.
Following: "years"
Insert: "nor more than 25 years"

AND AS AMENDED

DO PASS

LES NILSON, Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 678

INTRODUCED BY KITSELMAN, KEYSER, SAUNDERS, LEE, WALLIN, LYBECK, RYAN, BOYLAN, UNDERDAL, HAGER, SEVERSON, CURTISS, ZABROCKI, E. SMITH, PISTORIA

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN ADDITIONAL SENTENCE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION; AMENDING SECTION 46-18-222, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years OR MORE THAN 25 YEARS, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, [section 1], 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

THIRD READING

1 (2) the defendant's mental capacity, at the time of
2 the commission of the offense for which he is to be
3 sentenced, was significantly impaired, although not so
4 impaired as to constitute a defense to the prosecution;
5 (3) the defendant, at the time of the commission of
6 the offense for which he is to be sentenced, was acting
7 under unusual and substantial duress, although not such
8 duress as would constitute a defense to the prosecution;
9 (4) the defendant was an accomplice, the conduct
10 constituting the offense was principally the conduct of
11 another, and the defendant's participation was relatively
12 minor; or
13 (5) where applicable, no serious bodily injury was
14 inflicted on the victim unless a weapon was used in the
15 commission of the offense."
16 NEW SECTION. Section 3. Codification instruction.
17 Section 1 is intended to be codified as an integral part of
18 Title 46, chapter 18, part 2, and the provisions of Title 46
19 apply to section 1.

-End-

48th LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON-CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON-CURRED IN DATE
616	2-14-83	3-8-83	3-8-83					3-8-83	
617	3-1-83	3-17-83	3-17-83				3-17-83		
618	2-16-83	3-18-83	3-19-83				3-19-83		
619	2-16-83	3-10-83	3-10-83				3-10-83		
628	2-16-83	3-7-83	TABLED						
629	2-14-83	3-17-83	3-17-83				3-17-83		
642	2-17-83	3-8-83	3-10-83					3-10-83	
660	2-18-83	3-9-83	3-14-83					3-14-83	
662	3-16-83	3-18-83	3-22-83					3-22-83	
677	3-2-83	3-21-83	3-21-83				3-21-83		
678	3-2-83	3-18-83	3-19-83				3-19-83		
684	2-18-83	3-23-83	3-23-83				3-23-83		
705	3-1-83	3-16-83	3-19-83					3-22-83	
714	3-24-83	3-25-83	3-25-83					3-25-83	
731	3-1-83	3-21-83	3-21-83				3-21-83		
741	3-1-83	3-16-83	3-16-83				3-16-83		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 18, 1983

The forty-sixth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 18, 1983, at 10:03 a.m., in Room 325, State Capitol.

ROLL CALL: All Committee members were present.

CONSIDERATION OF HOUSE BILL 678: Representative Kitselman, sponsor of this bill, explained that this bill is designed to protect law enforcement officers. It is Representative Kitselman's belief that our law enforcement officers' jobs are complicated enough without criminals having access to armor-piercing ammunition. He also explained that although this bill cannot stop the use of armor-piercing ammunition, it does provide for an additional penalty if this type ammunition is used in committing a crime. Representative Kitselman suggested that HB678 be amended on p. 1, line 20, to read "not to exceed 25 years" rather than "or more than 25 years." Representative Kitselman pointed out to the Committee that HB678 is not intended to inhibit the responsible sportsman.

PROPONENTS: Col. R. W. Landon, representing the Montana Highway Patrol, circulated a bullet proof vest and armor-piercing bullet among the members of the Committee. Col. Landon pointed out that although members of the Montana Highway Patrol are encouraged to wear these bullet proof vests, the vests are not effective against armor-piercing bullets. Col. Landon informed the Committee that seven states have passed similar legislation to protect their law enforcement officers and urged the Committee to pass HB678.

Lewis and Clark County Sheriff Chuck O'Rielly, representing the Montana Sheriff's and Peace Officer's Association, testified that when he first became involved in law enforcement, he received 5-10 weapon-related calls a year. Now, Sheriff O'Rielly receives 5-10 weapon-related calls per week. He testified that the bullet proof vests are a small consolation to the officers who must answer these calls. Sheriff O'Rielly urged the Committee to give favorable consideration to HB678. There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Crippen questioned whether a person could buy armor-piercing ammunition that were regular factory loads. He was told that most of these types of ammunition are loaded by people in their own homes and considered to be "hot loads."

CONSIDERATION OF HOUSE BILL 618: Representative Keyser, sponsor of HB618, stated that this bill merely updates and modifies the Montana Medical Malpractice Act. Representative Keyser testified that this Act works very well. Representative Keyser then reserved the right to close.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 031883

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

DATE

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Jerome T. Loendorf	Mt. Medical assn	618	✓	
G. Brien Zins	Mt. Medical Asso.	618	✓	
Lavonne Arnold	MT Medical Assoc	618	✓	
Gerald J Neely	Mt. Medical Assn Mt Medical Malpractice Panel	618	✓	
M.E. "Mickey" Nelson	MT Coroner's Assn	467	—	
Col. R.W. London	HIWAY PATROL	678	X	
Senator Mark Etchart	Senate district 2	662	✓	
Matthew KNIEKIM	Milk River Irrigation Districts	662	✓	
PETE HRONEK	SELF	662	✓	
Jo Brunner	W.I.F.E.	662	✓	
Larry Anderson	Self	662		✓
Hugh Brown	self, MRR	662		✓
Chuck O'Reilly	Mt. Sheriffs & Peace Officers	678	✓	
Dave Brown	Rep. Dist. 83	467	X	
Senator Hammond				
John E Sedlitz Jr	Liberty County / Chester	662		X
Maria Check	Liberty Co. Comm	662		X
James Coffman	Town of Chester	662		X
Garth Good	SELF	662		X
Steve Brown	Mt. Renewable Resources	662		X

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 19, 1983

The forty-seventh meeting of the Senate Judiciary Committee was called to order by Vice-Chairman Crippen in the absence of Chairman Turnage at 9:05 a.m., on March 19, 1983, in Room 325, State Capitol.

ROLL CALL: All members were present with the exception of Senator Berg.

CONSIDERATION OF HOUSE BILL 215: Representative Ramirez, sponsor of the bill, testified that this bill originated with the Montana Banker's Association and the Montana State Bar Legislative Committee. Representative Ramirez explained that the original Act was drafted in 1931 and adopted by Montana in 1959. It is Representative Ramirez's opinion that Montana is behind in adopting this Act as it is proposed in HB215. Representative Ramirez stated that the objective of HB215 is to determine the actual intent of a person who sets up the trust.

PROPONENTS: Mr. Howard E. Vralsted, of the Northwest Union Trust Company in Billings and appearing on behalf of Montana Banker's Association Trust Division, testified that he has reviewed similar legislation of other states, and it is his conclusion that Montana should adopt the revised Uniform Principle and Income Act. Mr. Vralsted testified that this legislation is intended to treat all beneficiaries fairly. Mr. Vralsted informed the Committee that the primary changes between the 1931 Act and HB215 are:

1. The 1931 Act does not allocate royalties received from minerals. HB215 has a provision for allocation of this income.

2. HB215 provides for depreciation, where the 1931 Act failed to contain this provision.

3. HB215 provides for allocation of trustee's fees, court costs, and attorney's fees.

4. In 1959, when the 1931 Act was adopted, that Act did not apply to trusts which were already established.

Mr. Vralsted informed the Committee that HB215 also changed the definition of "inventory value" and "trustee." Mr. Vralsted urged the Committee to support HB215.

Mr. David L. Johnson, Chairman of the Legislative Committee, Tax and Probate Section, State Bar of Montana, testified that Montana has not had much litigation construing the 1959 Act. Because of this, it is difficult to know exactly what the governing rules are. Mr. Johnson also testified that HB215 will not have a negative impact on tax receipts in Montana. He urged the Committee to support HB215.

under a contract for deed. The purchaser now is not required to be notified of certain things which affect the property. Under HB812, holders of any purchasing interest in the property would be notified of all legal actions taken on the property.

PROPONENTS: Mr. Greg Groepper of the Montana Department of Revenue, submitted written testimony (see attached Exhibit "E") and stated that when a notice is served on the Clerk and Recorder, a Realty Transfer Certificate should also be completed to notify the Assessor's Office.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

ACTION ON HOUSE BILL 467: Senator Galt moved that HB467 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL ~~628~~ 618: Senator Turnage moved that HB618 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 678: Senator Turnage moved that HB678 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 438: Senator Turnage moved that HB438 BE TABLED. This motion carried with Senator Halligan voting in opposition.

ACTION ON HOUSE BILL 705: Senator Turnage moved that Steve Brown's proposed amendments BE ADOPTED. This motion carried unanimously. Senator Turnage then made a motion that HB705 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 215: Senator Mazurek made a motion that HB215 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 855: Senator Mazurek moved that the amendments proposed by David L. Johnson BE ADOPTED. This motion carried unanimously. Senator Mazurek moved that HB855 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 257: Senator Mazurek moved that HB 257 and the Statement of Intent BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 331: Senator Galt moved that the first set of amendments to HB331 (see attached Exhibit F) BE ADOPTED. This motion carried unanimously. Senator Turnage moved that HB331 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 031983

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)			✓
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

STANDING COMMITTEE REPORT

March 19, 19 83

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 678
Kitselman, (Shaw)

Respectfully report as follows: That House Bill No. 678

DO PASS

BE CONCURRED IN

JEAN A. TURNAGE Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 678

INTRODUCED BY KITSELMAN, KEYSER, SAUNDERS, LEE, WALLIN, LYBECK, RYAN, BOYLAN, UNDERDAL, HAGER, SEVERSON, CURTISS, ZABROCKI, E. SMITH, PISTORIA

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN ADDITIONAL SENTENCE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION; AMENDING SECTION 46-18-222, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years OR MORE THAN 25 YEARS, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, [section 1], 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

REFERENCE BILL

1 (2) the defendant's mental capacity, at the time of
2 the commission of the offense for which he is to be
3 sentenced, was significantly impaired, although not so
4 impaired as to constitute a defense to the prosecution;
5 (3) the defendant, at the time of the commission of
6 the offense for which he is to be sentenced, was acting
7 under unusual and substantial duress, although not such
8 duress as would constitute a defense to the prosecution;
9 (4) the defendant was an accomplice, the conduct
10 constituting the offense was principally the conduct of
11 another, and the defendant's participation was relatively
12 minor; or
13 (5) where applicable, no serious bodily injury was
14 inflicted on the victim unless a weapon was used in the
15 commission of the offense."
16 NEW SECTION. Section 3. Codification instruction.
17 Section 1 is intended to be codified as an integral part of
18 Title 46, chapter 18, part 2, and the provisions of Title 46
19 apply to section 1.

-End-